

REMARKS

This Response is to the Final Office Action of October 9, 2003. Claims 1 to 22 were pending previously in this application. The claim amendments, drawing changes and amendments to the specification presented in the previous amendment have been accepted. In this Amendment, Claims 1, 11 and 18 have been amended to more clearly define the present invention over the art discussed below. Applicant believes that the current amendments do not add new structural elements to the claims but instead more clearly define the elements that existed. Accordingly, Applicant kindly asks that the present amendments be entered. Indeed, Applicant submits that the current amendments place the claims in better position for appeal if same is needed.

In the Office Action, Claims 1 to 8, 10 to 16 and 18 to 22 were rejected under 35 U.S.C. § 103(a) as being obvious in view of U.S. Patent No. 2,380,367 to Ranney ("*Ranney*"), U.S. Patent No. 6,138,905 to Hachenski ("*Hachenski*") and in further view of U.S. Patent No. 5,896,686 to Howes ("*Howes*"). Claims 9 and 17 were rejected under 35 U.S.C. § 103(a) as being obvious in view of *Ranney*, *Hachenski*, *Howes* and in further view of U.S. Patent No. 5,375,704 to Focke et al. ("*Focke*").

This Amendment incorporates by reference each of the distinctions and advantages stated in the previous Amendment. To recap those advantages briefly, the present invention is directed to a chewing gum package housing chewing gum, wherein an end wall of the package is removable. Giveaway information is printed or otherwise marked and placed inside the package so that a consumer must open the package and remove or move the end wall to view in the end wall whether the consumer has won a giveaway. The package is advantageous in one respect because the consumer can then redeem the end portion with the giveaway information if such information displays a giveaway for the consumer. At the same time, the gum products remain housed inside the package so that the consumer can consume the gum over many days if desired. Also, the consumer can transport the gum in a typical manner, such as placing the gum package with the gum in the consumer's pocket.

The consumer can readily view the giveaway information upon removing the end. Further, manipulation of the removed portion is not required. A plastic bottle having a cap with indicia does not share the same advantages because, while the bottle holds the product when the

cap is removed, the liquid product is exposed to air, and therefore has a limited consumable life once the cap is removed. While plastic bottles allow for the caps to be replaced, such action would not allow the consumer to redeem the replaced cap for a prize. Since bottles of liquid are typically consumed completely shortly after being opened, the above-described difference between the liquid bottle and the gum package of the present invention does not overly effect the liquid package negatively. With gum products, however, the package should be designed so that the consumer can consume the gum products housed within over a period of days, or even weeks.

Bottles have an additional problem with respect to giveaway information. That problem is stated in *Howes* at column 1, line 23 as follows:

... one major difficulty that has been encountered in the use and distribution of products employing a promotion of this nature is the ability of consumers to determine prize winning products from non-prize winning products prior to purchasing the product. By manipulating the closed product and carefully observing the printed material placed under the cap, winning products can be found on the store shelf and selected by the consumer. As a result, the desired random distribution of prizes to all purchasers is thwarted.

The Office Action is correct at page 7, section 9 that item 22 of *Howes* is a lens, not a cover. The lens of *Howes* is used to thwart would-be prize seeking consumers who attempt to view prizes prior to purchasing the product. *Howes* takes a different approach to solving the problem than does the present invention. The lens 22 enables the consumer to view a first image, e.g., a generic phrase or advertisement, without removing the cap and to view a second image, e.g., prize information, only after removing the cap. Importantly, the consumer in *Howes* can view at least a portion of an inner surface of its cap prior to removing the cap from the bottle (see column 7, line 1).

The claims of the present invention solve the above-described problem with promotional giveaways and are distinguished over *Howes* because each of the independent claims currently specifies that no part of an inner surface (bearing giveaway information) of a removable end of a package is visible until the end is at least partially and permanently removed from the rest of the package. In *Howes*, some of the inner surface and indicia thereon is viewable without removing the cap. *Howes* specifically requires that a lens be provided to prevent one from viewing the

indicia prior to removing the cap. If this lens is not present as noted by *Howes*, then one can view the giveaway information or indicia prior to removing the cap, which teaches away from Applicant's claimed invention.

As noted by the Office Action, *Ranney* does not disclose viewing giveaway information on an inner surface of a package. *Ranney* simply does not help one of skill in the art in trying to reconstruct the invention as presently claimed. Further, *Hachenski* fails to disclose an end that is designed to be removed, an element which is required by each and every claim and is taught away from by *Hachenski*.

As discussed herein and in the previous response incorporated herein by reference, the elements of Claims 1, 11 and 18, as well as the claims that depend therefrom, set forth structural limitations that are not taught or suggested by *Hachenski*, *Howes*, and *Ranney*, either alone or in combination. It is axiomatic that for an obviousness rejection, each element of the claim must be taught by at least one of the references. The cited art fails to meet this test at least with regard to giveaway information provided on an inner surface of a package end, where no part of the inner surface is viewable until the end has been at least partially and permanently removed.

Applicant is not attempting to show that the references alone are not enough, as asserted in section 7 of page 7, rather, the references are taken individually to show that elements of the present claims are missing completely regardless of any combination made of the cited references. At least some of those distinguishing elements have been amended to the claims, which is responsive to the Office Action's assertion at page 7, section 8.

At page 7, section 10, it is asserted that *Hachenski* is a bridging reference between *Howes* and *Ranney*. It should be appreciated however that the foldable indicia bearing flap of *Hachenski* is unworkable with *Howes*, which requires a threaded connection. Nor is the lens of *Howes* workable with *Hachenski*. The two references destroy one another with respect to the present claims.

With respect to the arguments made at page 8, section 12, Applicant respectfully reiterates that the references cannot be combined without undue hindsight reconstruction. First, the principal reference, *Ranney*, does not teach the provision of indicia on an inner portion of the packaging used to house chewing gum. *Hachenski* and *Howes* each teaches away from the

claims as discussed above. The claims can therefore only be gleaned in light of the Applicant's specification and claims.

With respect to the arguments made at page 8, section 11, Applicant reiterates and incorporates by reference each of the arguments from the last response with respect to *Focke* regarding Claims 9 and 17. The separate insert of Claims 9 and 17 is read in combination with their respective base claims to specify that the insert is viewable by looking towards an inner surface of an at least partially and permanently removed end of a product package. The printable carrier 28 of *Focke* is completely different as noted in the previous response, where the viewable portion 30 of *Focke* is viewable from outside of the pack 10, i.e., through clear plastic. *Focke* does not therefore remedy the deficiencies of the other references with respect to Claims 9 and 17, which specify that the insert be viewed by looking towards and inside of an at least partially and permanently removed end wall of the package. Applicant therefore respectfully submits that Claims 9 and 17 provide additional patentable features over the art of record.

Accordingly, Applicant respectfully requests that the rejections under 35 U.S.C. § 103 be withdrawn. It should also be noted that because this response is being submitted within two months of the date of the office action, Applicant enjoys the extension fee benefits stated in the Final Office Action should same need to be paid.

For the foregoing reasons, Applicant respectfully submits that the above-identified patent application is now in a condition for allowance and earnestly solicits reconsideration of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

Dated: December 9, 2003